

1 ROBERT W. FREEMAN, ESQ.
Nevada Bar No. 003062
2 Email: Robert.Freeman@lewisbrisbois.com
PAMELA L. MCGAHA, ESQ.
3 Nevada Bar No. 008181
Email: Pamela.McGaha@lewisbrisbois.com
4 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
Attorneys for Defendant
7 **STATE FARM MUTUAL AUTOMOBILE**
INSURANCE COMPANY

8
9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 TODD YOUREN, individually; and KIM
13 YOUREN, as parent and natural guardian
14 of BAILEY CARSTEN, a minor,

15 Plaintiff,

16 vs.

17 STATE FARM MUTUAL AUTOMOBILE
18 INSURANCE COMPANY, individually,
DOES I-X, and ROE CORPORATIONS I-
19 X, inclusive,

20 Defendants.

CASE NO. 2:14-cv-0117-JAD-VCF

**STIPULATION AND ORDER TO EXTEND
DISCOVERY**

(Fourth Request)

21 Pursuant to LR 6-1 and LR 26-4, the parties, by and through their respective
22 counsel of record, hereby stipulate and request that this Court extend discovery in the
23 above-captioned case for ninety (90) days, up to and including Friday, September 14,
24 2015.

25 In addition, the parties request that the expert disclosures, rebuttal expert
26 disclosures, dispositive motions and pretrial order be extended in accordance with the
27 discovery extension as outlined herein. In support of this Stipulation and Request, the
28 parties state as follows:

1 DISCOVERY COMPLETED TO DATE:

2 On January 23, 2014, Defendant removed the instant action to Federal Court.

3 On January 23, 2014, Defendant filed its Answer to Plaintiffs' First Amended
4 Complaint with Federal Court.

5 On January 23, 2014, Defendant filed its Certificate Required By Local Rule 10-6.
6 A Motion to Remand filed by Plaintiff on January 31, 2014.

7 On February 7, Defendant served Plaintiff with the Minute Order in Chambers
8 dated January 23, 2014.

9 On February 7, 2014, Defendant filed its Statement Regarding Removal.

10 On February 7, 2014, Defendant filed an Opposition to Plaintiff's Motion to
11 Remand.

12 On February 25, 2014, the parties filed a Joint Status Report Regarding Removal.

13 On March 25, 2014, the parties prepared and the Court entered a Stipulated
14 Discovery Plan and Scheduling Order.

15 On March 10, 2014, Plaintiffs served their initial list of documents and witnesses
16 on Defendant.

17 On March 31, 2014, Plaintiff Kim Youren, as parent and natural guardian of
18 BAILEY CARSTEN, a minor, served Interrogatories and Request for Production of
19 Documents on Defendant.

20 On March 31, 2014, Plaintiff Todd Youren served Interrogatories and Request for
21 Production of Documents on Defendant.

22 On April 8, 2014, Defendant served its initial list of documents and witnesses on
23 Plaintiff.

24 On April 9, 2014, Defendant served Interrogatories and Request for Production of
25 Documents on Plaintiff Kim Youren, as parent and natural guardian of BAILEY
26 CARSTEN, a minor.

27 On April 9, 2014, Defendant served Interrogatories and Request for Production of
28 Documents on Plaintiff Todd Youren.

1 On May 14, 2014, Plaintiff Kim Youren, as parent and natural guardian of BAILEY
2 CARSTEN, a minor, served responses to Defendant's Interrogatories and Request for
3 Production of Documents

4 On May 14, 2014, Plaintiff Todd Youren, served responses to Defendant's
5 Interrogatories and Request for Production of Documents

6 On May 15, 2014, Plaintiffs served their first supplement to their list of documents
7 and witnesses on Defendant.

8 On May 19, 2014, Defendant served its first supplement to its initial list of
9 documents and witnesses on Plaintiff.

10 On May 19, 2014, Defendant served its responses to Interrogatories and Request
11 for Production of Documents served by Plaintiff Kim Youren, as parent and natural
12 guardian of BAILEY CARSTEN, a minor.

13 On May 19, 2014, Defendant served its responses to Interrogatories and Request
14 for Production of Documents served by Plaintiff Todd Youren.

15 On June 18, 2014, this Court issued its Order Denying Plaintiff's Motion to
16 Remand.

17 On June 26, 2014, Defendant filed its Motion to Extend Discovery Deadlines.

18 On August 11, 2014, this Court issued its Order extending the Discovery
19 deadlines.

20 On September 25, 2014, Defendant took the deposition of Plaintiff Todd Youren,
21 wherein he identified recent medical treatment in Colorado, of which neither counsel for
22 Plaintiffs nor counsel for Defendant was aware.

23 On October 2, 2014, the Court issued its Order extending the Discovery Deadlines.

24 On October 10, 2014, Defendant took the depositions of Kim Youren and Bailey
25 Carsten.

26 On October 30, 2014, Plaintiff Todd Youren provided his Third Supplement to
27 Initial FRCP 26.1 Disclosures identifying the names of multiple new medical providers he
28 treated with in Colorado.

1 On October 30, 2014, Plaintiff Todd Youren provided his second supplemental
2 answers to Defendant's interrogatories.

3 On December 11, 2014, Plaintiffs noticed the deposition of Howard Brong for
4 December 29, 2014, and noticed the deposition of Person Most Knowledgeable for State
5 Farm for January 13, 2015.

6 On March 24, 2015, Plaintiffs noticed the deposition of Howard Brong for May 8,
7 2015, and noticed the deposition of Person Most Knowledgeable for State Farm for May
8 7, 2015.

9 On April 13, 2015, Plaintiff Todd Youren provided Defendant with a list of his prior
10 medical providers, his medical providers in Colorado, Idaho and Arizona along with a
11 HIPPA authorization which allows Defendant to independently obtain the new medical
12 records.

13 DISCOVERY REMAINING

14 The parties must conduct the following discovery:

15 Plaintiffs continue to gather medical records related to newly disclosed medical
16 treatment obtained by Plaintiff Todd Youren in Colorado.

17 Defendant will obtain the pertinent medical records, educational records and other
18 documentation, necessary to continue to investigate Plaintiffs' claims. Plaintiff Todd
19 Youren mistakenly believed a medical authorization had been previously provided to
20 Defendant which would have allowed Defendant the ability to obtain records from the
21 newly disclosed medical providers. Upon notification by Defendant that it had not
22 received the appropriate medical authorization, Plaintiff Todd Youren provided Defendant
23 a HIPPA compliant authorization on April 13, 2015, accompanied by the names and
24 addresses of his chiropractor, general practitioner, orthopedic surgeon and a pain
25 management specialist in Colorado, along with other medical providers in Arizona and
26 Idaho. Thus, additional time will be necessary for the parties to obtain the medical
27 records and bills related to Plaintiff Youren's recent medical treatment from these out of
28

1 state providers;

2 Defendant is in the process of scheduling the depositions of Plaintiffs' medical
3 providers now that Defendant has a medical authorization which allows Defendant to
4 obtain all of Plaintiff Todd Youren's medical records. The depositions include, but may
5 not be limited to, the following: Jason Jaegar, DC; Dr. Miciano, Dr. Bazemore, MD;
6 psychologist Daniel Shiode; Dr. William Smith; Dr. Russell Shah; social worker Karie
7 Lindsay, Dr. Mortillaro; Person Most Knowledgeable for the Peavey
8 PsychoNeuroPlasticity Center; and possibly Dr. William Orrison. Defendant will likely
9 need to take the depositions of the four (4) medical treating providers who reside in
10 Colorado, but those depositions will require travel to Colorado. Thus, completing the
11 depositions of all known medical providers requires an extension of the current discovery
12 deadline;

13 Plaintiffs and Defendant require an opportunity to review the medical records of
14 Plaintiff Todd Youren's recently disclosed medical providers in Colorado, in order to
15 determine whether the nature of the treatment requires additional expert opinion for this
16 case. It is unknown whether the medical records include any medical recommendations
17 for future medical treatment such as injections or spine surgery, thus, an extension to the
18 current expert deadlines is necessary to allow both parties an opportunity to retain any
19 additional experts if appropriate.

20 Defendant will take the deposition of any expert designated by Plaintiffs; however,
21 meaningful depositions will need to be scheduled after the parties obtain a complete copy
22 of all of Plaintiff Todd Youren's medical records from the Colorado medical providers.
23 Additionally, additional time is necessary to afford Defendant an opportunity to complete
24 the depositions of the State Farm employees so Plaintiffs' claims handling expert can be
25 fully informed and prepared to offer opinions at the time of deposition;

26 Plaintiffs have noticed the deposition of Defendant's claim representative, Howard
27 Brong and the Rule 30(b)(6) witness on behalf of Defendant. Counsel for the parties
28 have conferred regarding the scope of the Rule 30(b)(6) deposition; however, it is likely

1 the deposition will require multiple deponents to address the various deposition topics
2 because there are 45 topics contained within the deposition notice. The parties are in the
3 process of scheduling these depositions; however, the depositions will likely require travel
4 outside of Nevada, so additional discovery time is necessary to complete these
5 depositions;

6 Plaintiffs are anticipated to take the depositions of the Defendant's designated
7 expert witnesses; however, additional time is necessary to afford Plaintiffs an opportunity
8 to complete the depositions of the State Farm employees so Defendant's claims handling
9 expert can be fully informed and prepared to offer opinions at the time of deposition;

10 The parties will take the depositions of any and all other witnesses garnered
11 through discovery.

12 This recitation of discovery to be completed is not intended to be limiting, but it is
13 set forth to advise the Court of remaining discovery.

14 **WHY SUCH REMAINING DISCOVERY HAS NOT BEEN COMPLETED**

15 The parties aver, pursuant to Local Rule 6-1, that good cause exists for the
16 requested extension.

17
18 The parties agree that, pending this Court's approval, extension of remaining
19 discovery deadlines is appropriate. On September 25, 2014, Plaintiff Todd Youren
20 disclosed for the first time, multiple additional medical providers he has seen since
21 moving to Colorado approximately one year ago. Plaintiff testified that he believes one of
22 his doctors in Colorado advised him he may require a lumbar spine surgery at some point
23 in the future. Plaintiff did not disclose in his responses to Defendant's written discovery,
24 any medical treatment and/or medical providers of which Defendant was not already
25 aware. Some of Plaintiff's additional medical treatment was obtained after Plaintiff
26 provided his responses to Defendant's written discovery. Plaintiff's attorney was also
27 unaware of this additional treatment until the date of Plaintiff's deposition, and has
28 required additional time to gather the additional medical records and bills.

1 Counsel for Todd Youren has been in the process of gathering all the newly
2 disclosed medical records, but has yet to obtain a complete copy of all the records.
3 Defendant was not able to independently request any of the medical records because it
4 was not provided with a HIPPA compliant medical authorization until April 13, 2015, due
5 to a misunderstanding that Plaintiffs had already provided the requisite authorization.
6 Thus, Defendant needs sufficient time to independently obtain the newly disclosed
7 medical records and determine if any additional experts are necessary.

8 This is a complex case, involving two Plaintiffs with multiple causes of action
9 against the Defendant. Each Plaintiff claims personal injuries as a result of an automobile
10 accident. Plaintiff Bailey Carsten claims to have sustained a brain shearing injury which
11 has negatively impacted her physically, mentally and emotionally. The Plaintiffs also
12 allege bad faith causes of action against State Farm which require considerable
13 discovery.

14 To complicate matters further, Plaintiffs' counsel left his prior employment at the
15 Richard Harris Law Firm at the beginning of 2015, and recently opened his own law firm,
16 Cloward Hicks & Brasier which has required considerable time and attention towards
17 administrative tasks to get the office up and running. This has resulted in some delay in
18 being able to obtain Plaintiff Youren's medical records and to complete discovery for this
19 matter. Thus, the parties request additional time in which to complete discovery so this
20 matter can be heard on its merits.

21 Defendant and Plaintiffs will need to gather these records and submit the new
22 records to their respective medical experts for review. Depending upon the information
23 contained within the new medical records (especially if there is a surgical
24 recommendation) it may be necessary for the parties to designate additional expert
25 witnesses; therefore, additional time is necessary to allow the parties sufficient time to
26 designate expert witnesses. Thus, the parties request an extension to the current expert
27 deadlines, so the parties have sufficient time to conduct discovery into the newly
28 disclosed medical providers for Todd Youren, prior to the deadline to designate experts.

The parties agree that it is not feasible to complete the tasks necessary to obtain timely expert reports or to complete other time-sensitive discovery tasks in the amount of time currently allotted.

CURRENT AND PROPOSED DISCOVERY DEADLINES

Scheduled Event	Current Deadline	Proposed Deadline
Discovery Cut-off	June 12, 2015	September 14, 2015
Expert Disclosure pursuant to Fed R. Civ. P. 26 (a)(2)	April 13, 2015	July 13, 2015
Rebuttal Expert Disclosure pursuant to Fed. R. Civ. P. 26(a)(2)	May 13, 2015	August 13, 2015
Dispositive Motions	July 13, 2015	October 14, 2015, or at least thirty (30) days after the close of discovery
Joint Pretrial Order	August 13, 2015	November 13, 2015, or at least thirty (30) days after the decision of last Dispositive Motions

This is the fourth request for extension of time in this matter. This request for an extension of time is not sought for any improper purpose or other purpose of delay. Rather, it is sought by the parties solely for the purpose of allowing sufficient time to conduct discovery in this case and adequately prepare their respective cases for trial. The parties respectfully submit that the reasons set forth above constitute compelling reasons for the extension.

...

...

...

...

...

...

1 WHEREFORE, the parties respectfully request that this Court extend the discovery
2 period as outlined in the table above.

3 Dated this 21st day of April, 2015.

Dated this 21st day of April, 2015.

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

CLOWARD HICKS & BRASIER, PLLC

5 /s/ Pamela L. McGaha

/s Benjamin P. Cloward

6 Robert W. Freeman, Jr., Esq.
Nevada Bar No. 3062

Benjamin P. Cloward, Esq.

7 PAMELA L. MCGAHA, ESQ.
Nevada Bar No. 008181

Nevada Bar No. 11087

8 1060 Wigwam Parkway
Henderson, Nevada 89074

801 South Fourth Street
Las Vegas, Nevada 89101

9 *Attorneys for Defendant*

Attorneys for Plaintiffs

10
11 ORDER

12 IT IS SO ORDERED.

13 Dated this 22nd day of April, 2015.

14
15 

16
17
18
19
20
21
22
23
24
25
26
27
28
U.S. MAGISTRATE JUDGE